

Again, because the subject matter of claim 43 of the instant application is fully disclosed in the '458, neither the public use of the apparatus of the '458 patent, nor the published PCT application, both of which occurred after the filing date of the '458 patent, are prior art with respect to claim 43.

In view of the above, it is clear that the subject matter of the claims now remaining in the instant application (i.e., Claims 1 – 5, 7 - 24, 26, 27 and 29 – 43) have full antecedent support in the '458 patent, which incorporated by reference the disclosure of the '721 patent. As noted, the instant application claims priority back to the April 29, 1999 filing date of the '458 patent. The April 29, 1999 filing date of the '458 patent is prior to both the public use of the apparatus disclosed in the '458 patent and prior to the publication of PCT Application WO 99/38707. Thus, the subject matter disclosed in the '458 patent (including the disclosure of the '721 patent which was incorporated by reference) which supports the claims of the instant application (Serial No. 10/020,266) such that neither the public use of the apparatus disclosed in the '458 patent (which occurred after the filing date of the '458 patent) nor the published PCT application (which was published after the filing date of the '458 patent) are prior art with respect to the claims of the instant application.

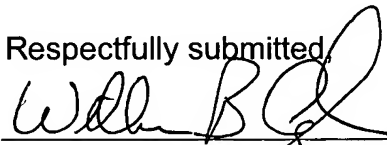
Because in the applicant filed his Declaration Under 37 CFR §1.131 Of Prior Invention, and because the applicant has now shown why such Declaration was not presented earlier, it is submitted that the applicant has now effectively

"sworn behind" the Yamamoto, Gayoso, and Dim et al. patents, it is submitted that the Yamamoto, Gayoso, and Dim et al. patents should be removed as prior art against the instant claims.

Also, because the Applicant has clearly shown that the subject matter of Claims 1 – 5, 7 - 24, 26, 27 and 29 – 43 is fully supported by the '458 patent to which the instant application claims priority, neither the April 30, 1999 public use of the apparatus disclosed in the '458 patent, nor the publication of the '707 PCT Application after the filing date of the '458 patent constitute prior art with respect to these claims of the instant application.

Accordingly, reconsideration and allowance of the claims of Claims 1 – 5, 7 - 24, 26, 27 and 29 – 43 is solicited.

Respectfully submitted,



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Attachments

1. U.S. Patent 6,142,721
2. U.S. Patent 6,193,458
3. PCT Application WO 99/38707, published August 5, 1999.
4. PCT Application WO 00/66366, published November 9, 2000.